State cannot be expected to depart from it upon the precise facts; but in such States the policy first declared by Minnesota is followed, and the courts refuse to extend the principle to cases of other beneficial user of land, however undistinguishable those cases be in principle from the turn-table cases. The case for the child will receive some support from a late English decision that a landowner is under a special liability to keep that part of his premises which abuts upon a highway safe for children. Recent American authority, however, upon the collateral question, inclines wholly the other way. Indeed, it commends itself to common sense that "a landowner cannot be bound to guard every stairway, shed, tree, and open window so that a child cannot climb to a precipitous place and fall off," or "every pond and excavation so that he fall not in." or "every switch yard and mill so that he do not enter," or "every coil of rope on shipboard, that he be not entangled." And so the several cases hold. *San Antonio & A. P. R. R.* v. *Morgan*, 45 S. W. Rep. 189, s. c. 374, s. c. 46 id. 28 (Tex.); *Harred* v. *Watney*, 78 Law Times Rep. 788; *Hackney* v. *Wolloston*, 75 N. W. Rep. 1037 (Minn.); *Stendall* v. *Boyd*, 75 N. W. Rep. 735 (Minn.); *Jackson* v. *Louisville & N. R. R.*, 46 S. W. Rep. 5 (Ky. C. A.); *Buck* v. *Amory Co*, 1 N. H. Reporter, 182.

The general result of these late authorities is to eliminate the fiction of an "implied invitation" or "allurement," or a "constructive intent" from the argument for the child, and to eliminate the theory of the absolute immunity of the landowner from obligation to trespassers from the argument for the landowner. There remains a clear issue of public policy: does the danger of occasional harm to children outweigh the benefit to the commnnity of leaving owners unfettered in making beneficial use of their land?

THE RIGHT TO PRIVACY. — It has long been public opinion that there must be found some principle of law to protect the privacy of the individual from the paragraphs, caricatures, and advertisements of the public print. A development in the law to meet this opinion would seem to be arrested by a recent decision in the Queen's Bench Division. *Dockrell* v. *Dougall*, 78 Law Times Rep. 840. In this case the plaintiff was a physician, the defendant, the owner of a medicine called Sallyco. In an advertisement of his medicine the defendant published of the plaintiff, with substantial truth, but without authorization: "Dr. Morgan Dockrell, physician to St. John's Hospital, London, is prescribing Sallyco as an habitual drink. Dr. Dockrell says nothing has done his gout so much good." For this the plaintiff brought an action; but the suit was dismissed upon the ground that there was no injury to the plaintiff's property or reputation.

The present actions for defamation fail to give a remedy in two classes of cases where there may often be actual wrongs. When a statement is false but is neither libel *per se* nor a cause of pecuniary loss, and when a publication is true, there are no actions for defamation. The existence of this unredressed residue in the law governing publication has given rise to the question whether the modern law does not recognize something in the nature of a right to privacy to protect personal appearance, sayings, acts, and personal relations from unwished publicity. This hypothesis of a right to privacy has appeared by way of *dictum* in late American reports. *Schuyler* v. *Curtis*, 174 N. Y. 434. The tendency of English authority has also been definitely in the same direction until

the refusal of a remedy in the principal case. *Prince Albert* v. *Strange*, 2 De G. & Sm. 652. The general result has been that with various reasons and in varying ways relief has been given in the case of some outrages against privacy; but the existence of a special category of rights to privacy has not been clearly realized, or the limits precisely defined. *Dixon* v. *Holden*, L. R. 7 Eq. 488.

The principle upon which a right against an invasion of privacy depends appears from a simple analysis of rights. Even crudest common law protected the person from more than mere batteries: it considered assaults and insults trespasses as well. The essential element in the trespass was the invasion of the person against the person's will. As sensations grew more intense, that became an invasion of the person which a ruder age did not so consider. The redress for the invasion of privacy may then well be a modern phase of the protection given to the person since the ancient trespass. If this view be correct, any publication which invades the privacy of a private individual, or such privacy of a public individual as he had not forfeited by his position. is a *prima facie* injury without more damage.

MANDAMUS TO A GOVERNOR. — New York State has joined the ranks of those who deny that a State court can control the governor by mandamus. *People* v. *Morton*, 50 N. E. Rep. 791 (N. Y.). The governor of New York is *ex officio* one of the Trustees of Public Buildings. In this capacity he is bound under a State statute to give preference to discharged Union soldiers as servants in the Capitol buildings, and, moreover, not to remove them except upon proof of incompetency. The statute is stringent; it allows the soldier to enforce the rights thus conferred by mandamus. The relator in the principal case was a discharged Union soldier who ran the elevator in the New York Senate building until he was removed without cause. He thereupon applied for a mandamus to compei the trustees, among them the governor, to reinstate him. The Court of Appeals, however, with a single dissent, held that the mandamus against the governor could not be granted, and contented itself with a simple affirmation that the relator had been improperly removed, and was entitled to be reinstated.

Questions of this sort are what test the balance of our constitutional form of government. Some courts, following the *dictum* of Chief Justice Marshall, that it is not the office, but the character of the act to be performed, that turns the scale, while refusing to interfere with the executive in regard to acts which call for the exercise of his discretion, issue commands to a governor to do acts in regard to which he has no choice when once he has read the statutes and applied the rules to the facts before him. *Tennessee & Coosa R. R. Co.* v. *Moore*, 36 Ala. 380; *Marbury* v. *Madison*, 1 Cranch, 380. But is not this proceeding a farce? Without a resort ro the fiction invoked by Mr. Justice Haight in the principal case, that the governor is the successor of the king at common law, — which with all deference he is not, but rather an officer co-ordinate with the court, to both of whom separate functions are delegated by the sovereign people, — without the aid of that fiction, objections to this mandamus are revealed by a study of the theory of the Federal and State constitutions. Co-ordination and interdependence of the different branches of the government are the rule. Although the courts have the power of declaring what the law is, and so far seem to be above